PP v. MOHAMAD SHAFIE ABDUL RANI & OTHER APPEALS

HIGH COURT MALAYA, IPOH
SU TIANG JOO JC
[CRIMINAL APPEAL NOS: AA-42JSKLB(A)-1-10-2020, AA-42JSKLB(A)-2-10-2020 & AA-42JSKLB(A)-3-10-2020]
21 OCTOBER 2021

Abstract – *The courts, in order to preserve the integrity and to uphold justice, may exercise the revisionary powers, the objective of which is to prevent miscarriage of justice; in this case, the court exercised its revisionary powers to allow the Deputy Public Prosecutor to withdraw the notices of withdrawal of appeal, having found that there were merits in the appeals.*

CRIMINAL PROCEDURE: *Revision – Powers of – Invocation of revisionary powers of court after filing of notice of withdrawal of appeal – Whether appeal considered dismissed once notice of withdrawal filed – Whether court could exercise powers before appeal struck off – Whether exercise of revisionary powers would cause prejudice to accused person – Whether court ought to exercise revisionary powers to correct miscarriage of justice – Criminal Procedure Code, s. 325*

The respondent faced a total of seven charges under three separate cases in the Sessions Court for offences against three children under s. 14(a) read together with s. 16 of the Sexual Offences Against Children Act 2017. The three charges were jointly heard. At the end of the prosecution case, the Sessions Court Judge ('SCJ') held that the prosecution had failed to prove a *prima facie* case in all three cases and discharged and acquitted the respondent. Dissatisfied, the prosecution appealed by filing three separate notices of appeal. However, a day before the appeals were to be heard, the prosecution filed a notice of withdrawal of appeal for each of the three appeals. The court, having read the papers and despite the notices of withdrawal, was of the preliminary opinion that further inquiry ought to be made into the three cases under appeal. Subsequently, the Deputy Public Prosecutor ('DPP') applied for the three notices of withdrawal of appeals to be withdrawn and struck off by the court, by drawing the court's attention to the revisionary powers under s. 325 of the Criminal Procedure Code ('CPC'). The DPP submitted, *inter alia*, there were merits to the appeals and there were serious errors of facts and law in the SCJ's judgment. The DPP further contended that the order being sought was not to substitute the order of discharge and acquittal to one of conviction, but for an order that a *prima facie* case had been made out at the end of the prosecution case and for the accused to be sent back to the Sessions Court to enter his defence to the charges. The respondent objected to the withdrawal contending that the prosecution had sufficient

time to reconsider the matter after the notices of appeal were filed and that the revisionary powers under s. 325 of the CPC ought not to be invoked. The questions that arose herein were: (i) would the filing of a notice of withdrawal of appeal bring an appeal to an end with immediate effect; (ii) whether the court could exercise its revisionary powers under Chapter XXXI of the CPC when a notice of withdrawal of appeal had been filed; and (iii) whether an appeal could be heard together with the court exercising its powers of revision.

Held (allowing DPP's application):

(1) Pursuant to the powers housed within s. 325 of the CPC, once the record of proceedings was brought to the knowledge of the court, the court may exercise any of the powers conferred by ss. 311, 315, 316 and 317 of the CPC. In the present cases, once the notices of appeals were registered with the court, all proceedings came within the jurisdiction of the court and could only be brought to an end with the leave of the court. A notice of withdrawal of appeal would not bring an appeal to an end until and unless the court allows the appeal to be struck off or dismissed. If the High Court can exercise its powers of revision, even if there is no appeal filed, it can also do so if an appeal is filed and a notice of withdrawal filed but before it is struck off by the court. (paras 20, 35 & 36)

(2) Before allowing an appeal to be withdrawn by any party, it behoves the court to exercise its discretion judicially to ensure that the ends of justice are met. In *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia*, the Federal Court held, *inter alia*, while art. 145(3) of the Federal Constitution ('FC') provides the Attorney-General ('AG')/Public Prosecutor ('PP') with a wide discretion to institute, conduct or discontinue any proceeding for a criminal offence, the discretion is not absolute or unfettered. In appropriate, rare and exceptional cases, such discretion is amenable to judicial review. In *Peguam Negara Malaysia v. Chin Chee Kow & Anor*, it was held that the reassertion of the Federal Court of its constitutional judicial power and its status as a superior court meant that the power of the AG to grant or refuse consent under s. 9(1) of the Government Proceedings Act 1956 to institute a suit or be joined as a party in any existing suit on behalf of the Government or the public in any matter pertaining to public, religious, social or charitable trusts is amenable to judicial review. Hence, the perceived absolute discretion of the PP in art. 145(3) of the FC is not absolute. Once a case comes within the purview of the court, the court will be armed with all the judicial powers to oversee the administration of justice. (paras 38 & 40-42)

(3) In these appeals, in the interest of justice, further inquiries ought to be made and the prosecution ought to reconsider whether it ought to withdraw the appeals. The prosecution, having done so and having decided that there were merits to pursue the appeals, both on the facts and the law, the matter would be heard, and that too, in the presence of the respondent and his counsel. In so acting, the court was conscious that justice is for all in the entire community including the children alleged to have been sexually assaulted and not only for the respondent. Therefore, the court allowed the application of the DPP and struck out the three notices of withdrawal of appeal and set the appeals down for hearing and revision. (paras 43, 44 & 48)

(4) Additionally, when the High Court exercises its revisionary powers under Chapter XXXI of the CPC, the court may issue a warrant directing that the accused be arrested and brought before the court and may commit him to prison pending the disposal of the appeal or admit him to bail. (para 47)

Case(s) referred to:
Ahmad Zahid Hamidi v. PP [2019] 1 LNS 1987 HC ***(refd)***
Bird Dominic Jude v. PP [2014] 4 CLJ 133 FC ***(refd)***
Goh Leong Yong v. ASP Khairul Fairoz Rodzuan & Ors [2021] 8 CLJ 331 FC ***(refd)***
Guyang & Ors v. Jabatan Hutan Sarawak [2019] 1 CLJ 401 HC ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561 FC ***(refd)***
Saied Safarigharigh lwn. PP [2017] 1 CLJ 426 CA ***(refd)***
Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors [2021] 6 CLJ 199 FC ***(refd)***
Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals [2021] 5 CLJ 581 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 56A
Criminal Procedure Code, ss. 153(2), 307, 311, 315, 316, 317, 325(1), (2), 326
Federal Constitution, art. 145(3)
Government Proceedings Act 1956, s. 9(1)
Penal Code, s. 409
Prevention of Crime Act 1959, s. 4(1)
Sexual Offences Against Children Act 2017, ss. 14(a), 16

For the appellant - Jean Sharmila Jesudason; DPP
For the respondent - Amir Khusyairi Mohamad Tanusi; M/s Amir Khusyairi & Assocs

Reported by S Barathi

A

JUDGMENT

Su Tiang Joo JC:

Queries

[1] (i) Would the filing of a notice of withdrawal of appeal bring an appeal to an end with immediate effect; (ii) whether the court can exercise its revisionary powers under Chapter XXXI of the Criminal Procedure Code when a notice of withdrawal of appeal has been filed; and (iii) whether an appeal can be heard together with the court exercising its powers of revision.

Introduction

[2] The respondent faced a total of seven charges under three separate cases in the Ipoh Sessions Court with offences against three children under s. 14(a) to be read together with s. 16 of the Sexual Offences Against Children Act 2017 (Act 792) (hereinafter called "Act 792").

[3] The three cases were jointly heard. After a trial and at the end of the prosecution's case, on 30 September 2020, the learned trial Sessions Court Judge ("LSJ") held that the prosecution had failed to prove a *prima facie* case in all three cases and discharged and acquitted the respondent.

[4] Dissatisfied, by three separate notices of appeal, one for each of the three cases and all dated 6 October 2020, the prosecution appealed.

[5] The respondent was and is at all times represented by learned counsel.

The Law On The Offences

[6] Section 14(a) of the Act 792 is reproduced below:

> Any person who, for sexual purposes:
>
> (a) touches any part of the body of a child;
>
> (b) makes a child touch any part of the body of such person or of any other person;
>
> (c) makes a child touch any part of the child's own body; or
>
> (d) does any other acts that involve physical contact with a child without sexual intercourse,
>
> commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be liable to whipping.
>
> Explanation 1 – The act of touching may involve the act of touching with any part of the body or with an object and may be done through anything including anything worn by the person touching or by the child touched.

Explanation 2 – In determining what constitutes sexual purposes, the court may take into consideration, among others, the part of the body that is touched, the nature and extent of the act of touching or the physical contact and all other circumstances surrounding the conduct.

[7] Section 16 of the Act 792 provides that:

(1) *If a person* who commits any offence under this Act or any offence specified in the Schedule against a child, *is in a relationship of trust with the child, such person shall, in addition to the punishment to which he is liable for such offence, be punished with imprisonment for a term not exceeding five years and shall also be punished with whipping of not less than two strokes.*

(2) In this section, a person is said to be in a relationship of trust with a child if the child is under his care, supervision or authority, including but not limited to:

(a) a parent, guardian or person who is related through full-blood or half-blood, or through marriage or adoption, including *de facto* adoption;

(b) a person who looks after one or more children for valuable consideration for any period of time;

(c) a teacher, lecturer or warden of a kindergarten, school, public institution of higher learning or private institution of higher learning;

(d) any person providing healthcare services in a Government healthcare facility or private healthcare facility as defined in section 2 of the Private Healthcare Facilities and Services Act 1998 (Act 586);

(e) a coach; and

(f) a public servant of whatever rank in the course of his duty under any written law in respect of the child. (emphasis added)

[8] The respondent is alleged to be in a relationship of trust with the children under the seven charges he faced and if convicted on all the seven charges he could be sentenced to a maximum of 175 years plus whipping of a minimum of 14 strokes.

Filing Of Notices Of Withdrawal Of Appeal

[9] The three appeals were to be heard on 30 June 2021 and the court had duly read the papers in preparation for the hearing of the appeals.

[10] On 29 June 2021, the prosecution filed a notice of withdrawal of appeal for each of the three appeals.

[11] Having read the papers and despite the notices of withdrawal of appeals, the court was of the preliminary opinion that further inquiry ought to be made into the three cases under appeal. Notice was given to the prosecution through this court's learned Senior Assistant Registrar to relook into the matter.

[12] The respondent had through his learned counsel, filed his written submissions on 28 April 2021 to oppose the appeals.

[13] By reason of the movement control order brought about by the COVID-19 pandemic, the hearing date of 30 June 2021 was vacated and refixed for 22 July 2021.

[14] On 22 July 2021, both learned Deputy Public Prosecutor ("DPP") and learned counsel for the respondent together with the respondent attended court. The learned DPP informed the court that she needed a bit more time to finalise her written submissions which she said will be ready to be filed by the afternoon and sought for the appeals to be heard the following day. Learned counsel for the respondent had no objections saying he is ready for the hearing the following day.

[15] It so happened that a trial scheduled for continued hearing on both 22 July 2021 and 23 July 2021 was vacated because representations had been made to the learned Attorney-General. With the respondent in the three appeals before the court being on remand for some other matter and if he were to be sent back to the remand centre, it may take another month at least for the requisite precautionary quarantine period for Covid-19 to lapse before he can be brought back to court for the hearing of these appeals, it was agreed by all parties that the appeals be heard the following day, 23 July 2021.

[16] The written submissions of the learned DPP were filed in the late afternoon of 22 July 2021.

[17] On 23 July 2021, the learned DPP applied for the three notices of withdrawal of appeals to be withdrawn and to be struck off by the court. Learned counsel for the respondent objected to such a withdrawal.

DPP's Contentions

[18] The learned DPP submitted that having reappraised the legal case authorities, she is of the considered opinion that there are merits to the appeals contrary to her earlier view. She submitted that based upon her reconsideration of the matter, there are serious errors in both facts and law in the judgment of the LSJ. The inference is that to her mind, appellate interference is warranted.

[19] On the withdrawal of the notices of withdrawals of the appeals, she drew the court's attention to s. 325 of the Criminal Procedure Code ("CPC") which provides as follows:

> (1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his 160 discretion, exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code.

(2) No order under this section shall be made to the prejudice of the accused unless he has had on opportunity of being heard, either personally or by advocate, in his own defence.

(3) Nothing in this section shall be deemed to authorise a Judge to convert a finding of acquittal into one of conviction.

[20] Pursuant to the powers housed within s. 325 of the CPC aforesaid, once the record of proceedings is brought to the knowledge of the court, the court may exercise any of the powers conferred by ss. 311, 315, 316 and 317 of the CPC. These powers are extensive and they include the following:

(i) to order a stay of execution of any judgment, order, conviction or sentence pending appeal, see s. 311 of the CPC;

(ii) pending appeal to direct the accused to be arrested and committed to prison or admit him to bail, see s. 315 of the CPC;

(iii) to reverse an order of acquittal or conviction, maintain or enhance the sentence or alter the nature of the sentence, see s. 316 of the CPC; and

(iv) take further evidence or direct it to be taken by the subordinate court, see s. 317 of the CPC.

[21] It was pointed out by the learned DPP that although under s. 326 of the CPC no party has any right to be heard either personally or by advocate before a judge when exercising his powers of revision, no order shall be made to the prejudice of the accused unless he has an opportunity of being heard, either personally or by advocate, in his own defence, see sub-s. 325(2) of the CPC.

[22] With the respondent having filed his written submissions and with both the respondent and his learned counsel present, there will be no concern about any order being made to his prejudice in his absence.

[23] The learned DPP added that the order being sought in the appeal is not to substitute the order of discharge and acquittal to one of conviction but for an order that a *prima facie* case had been made out at the end of the prosecution case and for the accused to be sent back to the Sessions Court to enter his defence to the charges.

Respondent's Contentions

[24] Quite rightly, the respondent submitted that he will not be submitting on the merits of the appeal.

[25] Instead, he asserted that prior to 23 July 2021 he had only heard that the prosecution had filed a notice of withdrawal of appeal and it's only in the morning of 23 July 2021 that he was informed by the court interpreters that such a notice had been filed for each of the three cases. He did not wish to address the Court on this during the case management on 22 July 2021 as he had only heard of it (dengar dengar sahaja).

[26] However, he drew the court's attention to the fact that the notices of appeal had been filed on 8 October 2020 and surely the prosecution would have sufficient time to reconsider the matter and by reason thereto, the revisionary powers under s. 325 of the CPC ought not to be invoked.

[27] Learned counsel asserted that there is no provision in the CPC that empowers the court to decide on whether to allow the withdrawal of the notices of appeal and once filed, it cannot be retracted as it prejudices the respondent.

[28] However, learned counsel conceded that there is no timeline for the court to exercise its revisionary powers and that the court can do so even if there is no appeal but he asserted that such (revisionary) powers cannot be used once the prosecution has exercised its rights to appeal under s. 307 of the CPC and after the prosecution has filed a notice of withdrawal of appeal. No authority was cited by learned counsel in aid of this proposition.

[29] Indeed, learned counsel candidly conceded that there is no provision in the CPC which provides that an appeal is considered dismissed once a notice of withdrawal is filed.

[30] In closing, learned counsel asserted that for the court to exercise its revisionary powers in the circumstances of this matter it would lead to an adverse perception by the respondent on the administration of justice and ought not to be proceeded with.

Court's Findings And Ruling

[31] In *Guyang & Ors v. Jabatan Hutan Sarawak* [2019] 1 CLJ 401 (HC), Lim Hock Leng JC (now J) accepted the submission of learned counsel for the appellants that:

> The Court can exercise its revisionary powers even though there is an appeal at the same time, as the purpose and scope of an appeal and the process of revision are different. The appellant/applicant for revision need not abandon one or the other unless the grounds are the same or overlap.

[32] In so holding Lim Hock Leng JC (now J) at paras. [13] and [14] of the same case very helpfully made references to several authorities and said:

> [13] In holding that an application for revision can be dealt with while an appeal is pending or called up at the same time, reference is made to *Mohammad Hassan v. PP* [1997] 1 CLJ (Supp) 485; [1997] 1 BLJ 485; [1985] 5 MLJ 65 where Augustine Paul JC (as he was then) held:
>
> > Section 305 of the CPC provides that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. Once such an appeal has been lodged, there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court

hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision and set aside a conviction (see p. 75E-F); *Lee Yu Fah & Ors v. PP* [1937] 1 LNS 31; [1937] MLJ 179, *Mohd Dalhar bin Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 2 CLJ 209; [1995] 113 MLJ 645 and *PP v. Mohamed Tarmizi* [1984] 1 LNS 107; [1985] 1 MLJ 219 followed.

[14] In *Manokaran & Anor v. PP* [1978] 1 LNS 118; [1979] 1 MLJ 262, Abdoolcader J held:

I have however not only extensive powers of revision in criminal proceedings under the provisions of s. 325 of the Criminal Procedure Code but even wider powers conferred by s. 35 of the Courts of Judicature Act 1964, and the deputy public prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my powers of revision if the circumstances of the case so warrant. I would merely add that in my view notwithstanding the provisions of s. 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law, in which event the conviction itself would be illegal and a nullity. It is true that the matters complained of in this appeal have been brought to my notice by way of a record of appeal and the proceedings before me are headed in the criminal appeal, *but, as I pointed out to counsel on both sides at the outset of this hearing, it is nevertheless open to me notwithstanding this to exercise my powers of revision in this matter,* and I referred in this regard to the decision of the Privy Council in *In re Chunbidya & Ors [1934] 62 IA 36* to the effect that *when the High Court has before it on appeal a record of criminal proceedings, it can proceed to exercise its powers of revision if it chooses to do so and make the requisite order although precluded by another provision in the Criminal Procedure Code from doing so in the appeal.* (emphasis added)

[33] In *Ahmad Zahid Hamidi v. PP* [2019] 1 LNS 1987, the High Court had to deal with an application by Ahmad Zahid Hamidi to amalgamate the 12 charges of criminal breach of trust by a public servant or agent levelled against him under s. 409 of the Penal Code into three pursuant to s. 153(2) of the CPC. The Public Prosecutor opposed the application, asserting that Ahmad Zahid Hamidi cannot be allowed to succeed in his challenge against the discretionary powers of the Attorney-General as the Public Prosecutor has the absolute discretionary power to decide how to institute criminal proceedings under art. 145(3) of the Federal Constitution and also that the court has no jurisdiction to entertain this application. Although Collin Lawrence Sequerah J did not allow the application, His Lordship, however, held that:

A [58] While the prosecution can properly exercise its powers to institute, conduct or discontinue any proceedings for an offence pursuant to Article 145(3) of the Federal Constitution, *the moment the case is registered with the court,* the court is vested with jurisdiction to entertain such applications to amalgamate charges in an appropriate case.

B [59] *Therefore, if it thought that the prosecutor was improperly exercising the power under article 145(3) of the Federal Constitution and section 376(1) CPC, the court can and will interfere to correct such exercise.*

[60] However, in the circumstances of this particular case, the court saw no good reason or rationale for so exercising its powers to that end. *The Respondent's submission therefore that this court had no jurisdiction to entertain such*
C *application as to do so would usurp the powers of the Public Prosecutor are devoid of any merit.* (emphasis added)

[34] The aforesaid words said in the context of the court having the power to amalgamate charges once proceedings for offences are registered with the
D court is premised upon the court having the judicial power to oversee that there is no miscarriage of justice.

[35] Similarly, in these cases before the court, once the notices of appeals are registered with the court all proceedings come within the jurisdiction of the court and can only be brought to an end with the leave of the court. A
E notice of withdrawal of appeal would not bring an appeal to an end until and unless the court allows the appeal to be struck off or dismissed.

[36] And, if the High Court can exercise its powers of revision even if there is no appeal filed, surely it can do so if an appeal is filed and a notice of withdrawal filed but before it is struck off by the court.

F **[37]** In the recent case of *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581, the Federal Court had to deal with a case of preventive detention under s. 4 of the Prevention of Crime Act 1959 ("POCA"). In this case, the applicant alleged that his detention without trial was unconstitutional and applied to be released by applying for a writ of
G *habeas corpus*. The majority of the Federal Court held that s. 4(1) of the POCA was not unconstitutional but the making of an order for remand by a Magistrate should not be automatic merely upon a written statement being produced, as there are prerequisites to be fulfilled before the making of the remand and the Magistrate is entitled to review the sufficiency and
H reasonableness of the police officer's grounds for believing that the appellants' names should be entered on the register. His Lordship Vernon Ong Lam Kiat FCJ held that the Magistrate is duty-bound to exercise his discretion **judicially** (emphasis added) in order to ensure that all the legal, procedural and constitutional safeguards are strictly complied with before
I making the remand order and that the question of s. 4 of the POCA requiring the Magistrate to act on the dictate of the executive, thereby violating the

doctrine of separation of powers, did not arise. After laying down the guidelines to be followed by the Magistrate, Vernon Ong Lam Kiat FCJ inquired of the Senior Federal Counsel and counsel for the appellants (see para. [149] of *Zaidi Kanapiah* (*supra*)) whether the guidelines were adhered to.

[38] By analogy, before allowing an appeal to be withdrawn by any party, it behoves the court to exercise its discretion judicially in order to ensure that the ends of justice are met.

[39] Having said the above, the court is conscious that in a later Federal Court case of *Goh Leong Yong v. ASP Khairul Fairoz Rodzuan & Ors* [2021] 8 CLJ 331, Zabariah Mohd Yusof FCJ in delivering the majority judgment in another POCA case where the appellant was also applying for a writ of *habeas corpus*, said at paras. [127] and [128] that the guidelines set out by Vernon Ong Lam Kiat FCJ in *Zaidi Kanapiah* (*supra*) are *per incuriam* as these guidelines cannot override and replace the statutory requirements as mandated by s. 4 of the POCA. However, here this court is not dealing with a POCA case but one under the Act 792 where the CPC, wherein the criminal revisionary powers of the High Court is housed in, would be applicable with full force and the issue of deciding the issues here in contravention of another statutory provision do not arise.

[40] However, it has since been settled in an unanimous decision of our apex court comprising a panel of seven Federal Court Judges in *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199 that:

> [112] Article 145(3) of the FC provides the AG/PP (Attorney-General/ Public Prosecutor) with a wide discretion to institute, conduct or discontinue any proceeding for a criminal offence. This wide discretion means the AG/PP has sole and exclusive discretion in that only he/she can exercise such power. **However, the AG/PP does not have absolute or unfettered discretion under art. 145(3).** As alluded to in the preceding discussion and following from it, it is our judgment that in appropriate, rare and exceptional cases, such discretion is amenable to judicial review. (emphasis added)

[41] See also *Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal* [2019] 4 CLJ 561 where the Federal Court at para. [81] held that the reassertion by the Federal Court of its constitutional judicial power and its status as a superior court meant that the power of the Attorney General to grant or refuse consent under s. 9(1) of the Government Proceedings Act 1956 (Revised 1988) (Act 359) to institute a suit or be joined as a party in any existing suit on behalf of the Government or the public in any matter pertaining to public, religious, social or charitable trusts is amenable to judicial review.

[42] In a nutshell, the perceived absolute discretion of the Public Prosecutor in art. 145(3) of the Federal Constitution is not absolute. The aforementioned Federal Court cases of *Sundra Rajoo Nadarajah* (*supra*) and *Peguam Negara Malaysia* (*supra*) lend support to the point that once a case comes within the purview of the court, the court will be armed with all the judicial powers to oversee the administration of justice.

[43] Having read the papers in these three appeals, I was of the considered opinion that in the interest of justice, further inquiries ought to be made and that the prosecution ought to reconsider whether it ought to withdraw the appeals. With the prosecution having done so and having decided that there are merits to pursue the appeals both on the facts and the law, the matter will be heard but of course, in the presence of the respondent and his learned counsel.

[44] In acting as the court has done in this case, the court is conscious that justice is for all in the entire community including the children alleged to have been sexually assaulted and not only for the respondent. In *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 at p. 165, the Supreme Court speaking through Abdul Hamid Omar CJ (Malaya) (as His Lordship then was) held that:

> We would also observe that the object of revisionary powers provided for in the Code is:
>
> > ... to confer upon criminal Courts a kind of *paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions* or apparent harshness of treatment, *which has resulted on the one hand in some injury to the due maintenance of law and order,* or on the other hand, in some undeserved hardship to individuals.
>
> (emphasis added)

[45] In *Saied Safarigharigh lwn. PP* [2017] 1 CLJ 426 (CA), Abdul Rahman Sebli JCA (now FCJ) cited with approval the case of *Bird Dominic Jude v. PP* [2014] 4 CLJ 133 (FC) which held that:

> The law on point is therefore s. 56A of the CJA which is designed to confer judicial power upon the Court to grant an order that will have the effect of preserving the integrity of any criminal appeal pending before it. It is intended to facilitate a full hearing of the appeal on its merit **so that justice is not only done to the accused but also the public and state.**
>
> (emphasis added)

[46] To facilitate ease of reference, s. 56A of the Courts of Judicature Act 1964 (Revised 1972) (Act 91) referred to above in the case of *Bird Dominic Jude* (*supra*) is reproduced hereunder:

> Where an appeal is presented against an acquittal, the Court of Appeal may issue a warrant directing that the accused be arrested and brought before it and may remand him to prison pending the disposal of the appeal or admit him to bail.

[47] It would be pertinent to add that when the High Court exercises its revisionary powers under Chapter XXXI of the CPC, the court may issue a warrant directing that the accused be arrested and brought before the court, and may commit him to prison pending the disposal of the appeal or admit him to bail, see ss. 325(1) and 315 of the CPC.

Conclusion

[48] Wherefore, the court allowed the application of the learned DPP and struck out the three notices of withdrawal of appeal and set the appeals down for hearing and revision with the hearing deferred at the request of learned counsel for the respondent to another date to enable him to study the written submissions filed by the learned DPP.